

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL PARKER <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	Civil Action No.: 98-2453 (RMU)
v.	:	
	:	
THE GRAND HYATT HOTEL <i>et al.</i> ,	:	Document No.:
	:	
Defendants.	:	

M E M O R A N D U M O P I N I O N

Granting in Part and Denying in Part the Plaintiffs’ Motion to Amend Partial Summary Judgment; Granting in Part and Denying in Part Defendant Hyatt’s Motion for Clarification

I. INTRODUCTION

Plaintiffs Michael Parker and Yvette Robinson Parker (“the plaintiffs” or the “Parkers”), common-law husband and wife, filed the instant action against The Hyatt Corporation, Square 345 Limited Partnership, Centerock Limited Partnership, Washrock Realty Associates, and Mr. Russell Ricalde (collectively, “Hyatt” or “defendant Hyatt”), as well as the District of Columbia and Metropolitan Police Department Officers Darnell Houston and Hector Lugo (“D.C.” or “defendant D.C.”). The plaintiffs asserted claims for negligent supervision, intentional infliction of emotional distress, conversion, excessive force, false arrest and imprisonment, malicious prosecution, conspiracy, negligent infliction of emotional distress and violation of 42 U.S.C. § 1981. The Hyatt and D.C. defendants moved for summary judgment.

In a Memorandum Opinion issued September 18, 2000 (“Mem. Op.”), the court: (a) granted the defendants’ motions for summary judgment on the counts of negligent supervision, conspiracy and violation of 42 U.S.C. § 1981; (b) denied the defendants’ motions for summary judgment on the counts of conversion, excessive force, false arrest and imprisonment, and malicious prosecution; and (c) granted the defendants’ motions for summary judgment on the counts of intentional infliction of emotional distress and negligent infliction of emotional distress with respect to Ms. Parker only. Mr. Parker’s emotional-

distress claims survived summary judgment.

The instant matter comes before the court on the plaintiffs' motion to amend partial summary judgment. Specifically, the plaintiffs seek to have the court's September 18 Order amended so as to limit the dismissal of Mrs. Parker's emotional-distress claims to defendant D.C. only. *See* Pl.'s Mot. to Amend Partial Summ. J. ("Pl.'s Mot.") at 2. The plaintiffs argue that Mrs. Parker should be allowed to pursue her emotional-distress claims against defendant Hyatt.¹ *See id.* In its opposition, defendant Hyatt seeks a clarification of the September 18 Order. Defendant Hyatt contends that the plaintiffs have alleged malicious prosecution only against defendant D.C., and since the plaintiffs' emotional-distress claims arise out of the alleged malicious prosecution, the plaintiffs cannot press emotional-distress claims against defendant Hyatt. *See* Def.'s Opp'n to Pl.'s Mot. to Amend Partial Summ. J. and Request for Clarification ("Def.'s Opp'n") at 2-3.

The court notes that the parties are now raising arguments they did not raise in their summary judgment filings. Since the issues raised merit consideration and resolution, the court will decide them in this Memorandum Opinion. For the reasons that follow, the court will grant in part and deny in part both the plaintiffs' motion and defendant Hyatt's opposition and request for clarification.

II. BACKGROUND

This case arose from events that transpired on July 6, 1997, when the plaintiffs dined at the Grand Slam Restaurant at the Grand Hyatt Hotel in Washington, D.C. Upon entering the restaurant, the plaintiffs sat at a table, and Mr. Parker, a paraplegic, moved from his wheelchair to a chair at the table. *See* Hyatt's Mot. for Summ. J. at 1; D.C.'s Mot. for Summ. J. at 1; Opp'n to Mot. for Summ. J. at 3.

¹ Defendant D.C. also filed an opposition to the plaintiffs' motion to amend partial summary judgment, in which it argued that the court's previous holding that Mrs. Parker's emotional-distress claims cannot proceed against defendant D.C. should also mean these claims cannot proceed against the two police officer defendants, Officers Darnell Houston and Hector Lugo. *See* Opp'n of Def. D.C., Houston, and Lugo. Since the officers were acting within the scope of their employment during the incident, the court agrees with defendants D.C., Houston, and Lugo on this point.

Shortly thereafter, the plaintiffs noticed an eyeglass case that a previous restaurant patron had left, either at the table at which the plaintiffs were seated or at a nearby table. The plaintiffs moved the eyeglass case, either close to Mr. Parker or into the pouch on Mr. Parker's wheelchair. *See Hyatt's Mot. for Summ. J. at 1; D.C.'s Mot. for Summ. J. at 1-2; Opp'n to Mot. for Summ. J. at 3.* The plaintiffs' waitress, Ms. Anita Garner, saw the plaintiffs' actions and summoned the Assistant Director of Hyatt Security, Russell Ricalde, who approached the plaintiffs. Mr. Ricalde asked if the plaintiffs had the eyeglass case, and the plaintiffs handed it over. *See Hyatt's Mot. for Summ. J. at 2-3; D.C.'s Mot. for Summ. J. at 2; Opp'n to Mot. for Summ. J. at 3-4.*

Mr. Parker then became agitated that Mr. Ricalde had approached him, and Mr. Ricalde and Mr. Parker exchanged words. Mr. Parker's tenor during this exchange is in dispute. Mr. Ricalde then called for additional security. *See Hyatt's Mot. for Summ. J. at 4-5; D.C.'s Mot. for Summ. J. at 2; Opp'n to Mot. for Summ. J. at 4-5.* The plaintiffs and the Hyatt defendants disagree about whether Hyatt security asked the plaintiffs to leave the restaurant and the plaintiffs refused to comply, or whether Hyatt security never asked the plaintiffs to leave. Hyatt security then withdrew from the scene, leaving the plaintiffs at the table, and called for the Metropolitan Police Department. *See Hyatt's Mot. for Summ. J. at 5-6; D.C.'s Mot. for Summ. J. at 2; Opp'n to Mot. for Summ. J. at 5.*

Shortly thereafter, officers Darnell Houston and Hector Lugo arrived at the scene. The officers briefly questioned Mr. Ricalde, and then approached the plaintiffs' table and asked them to leave the restaurant. The parties differ on what happened next. The plaintiffs state that Mr. Parker agreed to leave and told the officers that he needed his wife's assistance in transferring him back to his wheelchair, but that before she could help him the officers violently grabbed him, put him in a choke-hold, and struck him. *See Opp'n to Mot. for Summ. J. at 5-6.* The plaintiffs assert that the officers then dropped him to the ground and kicked him. *See Opp'n to Mot. for Summ. J. at 6.*

In contrast, the Hyatt defendants claim that Mr. Parker refused to leave the premises voluntarily, so the officers attempted to move Mr. Parker to his wheelchair. The D.C. defendants claim that Mr. Parker agreed to leave and asked the officers to help him into his wheelchair. *See Hyatt's Mot. for Summ. J. at 6-7; D.C.'s Mot. for Summ. J. at 3.* According to both defendants, while the police were in

the process of lifting Mr. Parker, he began to violently resist them, which made it impossible to move him to the wheelchair. The D.C. defendants claim that, upon being struck by Mr. Parker, officer Lugo stepped back, and because officer Houston could not hold Mr. Parker by himself, Mr. Parker was dropped to the ground accidentally. The Hyatt defendants claim that, upon violent resistance from Mr. Parker, the officers placed him back in the dining chair, but that Mr. Parker purposely slid to the ground and complained of injuries. *See Hyatt's Mot. for Summ. J. at 7-8; D.C.'s Mot. for Summ. J. at 3.*

At this point someone called for an ambulance, and when it arrived, Mr. Parker was taken to George Washington Hospital, where he was treated for alleged pain and abrasions. *See Hyatt's Mot. for Summ. J. at 8; Opp'n to Mot. for Summ. J. at 6.* After his discharge from the hospital, Mr. Parker was taken to the police station and was charged with unlawful entry and disorderly conduct. Ultimately, Mr. Parker was not convicted of the charges. According to the plaintiffs, the charges were dismissed, while the defendants maintain that the proceedings were "no-papered."² *See Hyatt's Mot. for Summ. J. at 8; Opp'n to Mot. for Summ. J. at 8.*

On October 15, 1998, the plaintiffs filed their complaint, which they have twice amended. The second amended complaint contains nine counts, asserting claims for: 1) negligent supervision, against D.C. and Hyatt; 2) intentional infliction of emotional distress, against D.C., Hyatt and Mr. Ricalde; 3) conversion, against Hyatt and Mr. Ricalde; 4) excessive force in violation of 42 U.S.C. § 1983, against Officers Houston and Lugo; 5) false arrest and imprisonment in violation of 42 U.S.C. § 1983, against Officers Houston and Lugo; 6) malicious prosecution in violation of 42 U.S.C. § 1983, against Officers Houston and Lugo; 7) conspiracy in violation of 42 U.S.C. § 1983, against Mr. Ricalde and Officers Houston and Lugo; 8) negligent infliction of emotional distress, against D.C., Hyatt and Mr. Ricalde; and 9) violation of 42 U.S.C. § 1981, against Hyatt and Mr. Ricalde. *See Second Am. Compl. ¶¶ 28-67.*

² In other words, the defendants claim that the prosecutor entered a *nolle prosequi*, which amounts to a formal abandonment of the action.

III. ANALYSIS

A. Legal Standard

Summary judgment is appropriate upon a finding that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). The substantive law on which a claim rests determines which facts are “material.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If a fact bears upon an essential element of the legal claim, then it is material; otherwise, it is not. *See id.*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Only disputes over facts that can establish an element of the claim, and thus those that might affect its ultimate resolution, can create a “genuine issue” sufficient to preclude summary judgment. *See Anderson*, 477 U.S. at 248; *Celotex*, 477 U.S. at 322.

To prevail on a motion for summary judgment, the moving party must establish that there are no genuine issues of material fact and that the non-moving party has failed to offer sufficient evidence to support a valid legal claim. *See Anderson*, 477 U.S. at 256; *Celotex*, 477 U.S. at 325. In ruling on the motion, the court must accept the evidence of the non-moving party as true and must draw all justifiable inferences in favor of the non-moving party. *See Anderson*, 477 U.S. at 255. It is not sufficient, however, for the non-moving party to establish “the mere existence of a scintilla of evidence in support of the [non-moving party’s] position . . . ; there must be evidence on which the jury could reasonably find for the [non-moving party].” *Id.* at 252. If the evidence in favor of the non-moving party “is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50 (internal citations omitted).

B. Clarification and Amendment of the Court’s September 18, 2000 Order

In the Memorandum Opinion and Order issued September 18, 2000, this court granted in part and denied in part defendant D.C.’s and defendant Hyatt’s motions for summary judgment. In that decision, the court, among other things, dismissed Mrs. Parker’s intentional and negligent infliction of emotional-distress claims (counts II and VIII). The court held that because Mrs. Parker had failed to notify the District of Columbia of her claim within six months of the alleged injury, as required under D.C. Code § 12-309, her emotional-distress claims were time-barred. *See Mem. Op.* at 13-14.

The plaintiffs now move to amend the court's Order. They argue that the portion of the decision disposing of Mrs. Parker's emotional-distress claims "limits itself to a discussion of District of Columbia Code Section 12-309 and various case authorities citing that section." *See* Pl.'s Mot. at 1-2. Moreover, the plaintiffs point out that section 12-309 applies to claims against the District of Columbia only and not to claims against private defendants. *See id.* at 2. Therefore, they contend, the court "should limit the dismissal of the female plaintiff's claims under Counts II and VIII to defendant District of Columbia *only*." *Id.*

The court agrees with the plaintiffs that D.C. Code § 12-309 does not apply to private-sector defendants. The text of the statute itself reads, in pertinent part:

[A]n action may not be maintained against the District of Columbia for unliquidated damages unless, within 6 months after the injury or damage was sustained, the claimant has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause and circumstances of the injury or damage.

D.C. Code § 12-309 (1981). Moreover, nothing in the language of Section 12-309 or in any of the applicable case law suggests that the section's notice requirement applies to a claim against a private defendant such as defendant Hyatt. Accordingly, as the plaintiffs suggest, Mrs. Parker's emotional-distress claims could theoretically proceed against defendant Hyatt. But before determining which of her two emotional-distress claims may go forward, the court must first address defendant Hyatt's request for clarification of the September 18, 2000 Memorandum Opinion. *See* Def.'s Opp'n. at 1-3. As will be explained below, the court concludes that only her claim for negligent infliction of emotional distress against defendant Hyatt may proceed.

In its previous Opinion, the court ruled that no statute-of-limitations provision barred the plaintiffs' emotional-distress claims. *See* Mem. Op. at 5-10. In arriving at that conclusion, the court recognized that the emotional-distress claims are "intertwined" with the plaintiffs' claims of excessive force (count IV) and malicious prosecution (count VI). *See* Mem. Op. at 8-9. The plaintiffs made this same argument in their opposition to the motions for summary judgment. *See* Opp'n to Mot. for Summ. J. at 9-11.

In its instant opposition, defendant Hyatt argues that the court should dismiss the plaintiffs'

emotional-distress claims against it altogether. Hyatt bases its reasoning on two facts: first, the plaintiffs' two emotional-distress claims grow out of the events giving rise to their claims of excessive force and malicious prosecution, and second, the plaintiffs' second amended complaint alleges these counts of excessive force and malicious prosecution against defendant D.C. *only*. See Def.'s Opp'n at 2-3. Thus, Hyatt argues, the plaintiffs' emotional-distress claims arise from events that the plaintiffs themselves allege were caused by defendant D.C. alone. See Second Am. Compl. ¶¶ 41-45, 49-54.

The court finds defendant Hyatt's argument persuasive. The court should note, however, that, in concluding that the plaintiffs' emotional distress claims are "intertwined" with their claims of excessive force and malicious prosecution, the court did so for purposes of resolving a statute-of-limitations dispute between the parties. See Mem. Op. at 5-10. Because the statute-of-limitations issue is distinct from the issue of which of the two emotional-distress claims applies to which of the two defendants in this case, the court will break down this Opinion to address clearly which claims may proceed against which defendants in this complicated matter.³

1. Mr. Parker's Emotional-Distress Claims Against Defendant District of Columbia

As the court noted in its Memorandum Opinion, the parties do not dispute that Mr. Parker timely satisfied the requirements of D.C. Code § 12-309 with respect to his claims against the District of Columbia. See Mem. Op. at 13. In addition, the complaint clearly alleges claims of intentional and negligent infliction of emotional distress, as well as claims of excessive force and malicious prosecution, against defendant D.C. See Second Am. Compl. ¶¶ 36, 45, 54, 62. Accordingly, both of Mr. Parker's emotional-distress claims against defendant D.C. remain intact.

2. Mrs. Parker's Emotional-Distress Claims Against Defendant District of Columbia

As the court concluded in its Memorandum Opinion, Mrs. Parker failed to timely satisfy the

³ As noted above, the parties have raised new issues and clarified several points in their instant motions. Thus, to the extent that any of the following rulings do not conform with the section of the September 18 Memorandum Opinion and Order dealing with the plaintiffs' emotional-distress claims, this Opinion should take precedence over the September 18 Memorandum Opinion and Order.

requirements of D.C. Code § 12-309 with respect to her claims against the District of Columbia. *See* Mem. Op. at 13-14. Nothing raised in the instant motions affect that conclusion. Accordingly, both of Mrs. Parker's emotional-distress claims against defendant D.C. remain dismissed.

3. Mr. Parker's Emotional-Distress Claims Against Defendant Hyatt

In their opposition to the defendants' motions for summary judgment, the plaintiffs argued that their *intentional* infliction of emotional distress claim is based upon the alleged events that gave rise to their claims of excessive force and malicious prosecution. *See* Opp'n to Mot. for Summ. J. at 9-11. As noted above, however, the second amended complaint alleges claims of excessive force and malicious prosecution only against defendant D.C. *See* Second Am. Compl. ¶¶ 45, 54. On the other hand, the plaintiffs did not argue in their opposition to the motions for summary judgment that their claim of *negligent* infliction of emotional distress arose from the alleged excessive force and malicious prosecution. Moreover, the second amended complaint's count VIII does not imply this line of reasoning. *See* Second Am. Compl. ¶¶ 59-62. Therefore, the court will allow Mr. Parker to proceed on his claim of *negligent* infliction of emotional distress against defendant Hyatt, but will dismiss his claim of *intentional* infliction of emotional distress with respect to defendant Hyatt.

4. Mrs. Parker's Emotional-Distress Claims Against Defendant Hyatt

For the same reasons as in Section 3 immediately above, the court will allow Mrs. Parker to proceed on her claim of *negligent* infliction of emotional distress against defendant Hyatt, but will dismiss her claim of *intentional* infliction of emotional distress with respect to defendant Hyatt.

IV. CONCLUSION

For all of these reasons, the court grants in part and denies in part both the plaintiffs' motion to amend partial summary judgment and defendant Hyatt's opposition and request for clarification. An order directing the parties in a fashion consistent with this Memorandum Opinion is separately and contemporaneously issued this ____ day of November 2000.

Ricardo M. Urbina
United States District Judge